

William Sheppard

AND

Thomas Stevens

Appellants.

John Smith, Steven Smith

and Anne Smith Infants, by their Father and next Friend

Respondents.

The Respondent's Case.

Will 17th. April, 1700.

THAT *John Newman*, the Respondent's late Uncle, did, by his Will in Writing, give to the said *John Smith* a Legacy of a 100 l. to the said *Stephen* 50 l. and to the said *Anne* 50 l. and several small Legacies to Children of his remoter Relations, and 20 l. a piece to the Appellants for their trouble in the Executorship, and all the residue of his Personal Estate to the Respondents, to be improved for them, and together with their said Legacies to be paid by the Appellants when of Age, and appointed them Executors in Trust, and gave the Appellant *Stevens* the Lease of his Farm for the residue of his Term, from *Michaelmas* then next, and dyed.

The Respondent's Father took a Journey to see the Appraisement fairly made on behalf of his Children, but the Appellants refused to let him be present at, or privy to the same, and got the Appraisement made by Friends of their own, procuring great part to be undervalued, and other part to be omitted.

10th. of Feb. 1700.

The Respondents exhibited their Bill in Chancery to call them to Account, and to have their Legacies, as also the residuary Part paid, and secured according to the said Will.

Answer. 21. May 1701.

To which Bill the Appellants, by answer, set forth an Appraisement, and said it was Just and True, and insisted they ought not to Account for the Summer Profits of the Testator's Farm.

Cause heard 15. Dec. 1701.

That the Respondents proved the Appellants refused to let their Father be present at the Appraisement, and also the Appellants Appraisement in many particulars was surcharged, and several Omissions proved.

The Cause was heard before the late Lord Keeper *Wright*, state and Summers Profits, and to pay the Respondents said Legacies, and also the said Indemnified them in so doing.

Examinations. 24th. April, 1702.

And Costs are reserved till after the Account taken.

ber, 1702.

The Appellants put in two insufficient Examinations. For, whereas they thereby account for but 70 Ewes

Report 11th. of January, 1703.

Examinations say there were 69 Sheep and 57 Lambs, Wool: And whereas by the Answer, the Cows are

14th. October, 1704. Exceptions Argued.

were fold for above 100 l. and so in several other Part

That after much delay by the Appellants, and abundance of two years time, settled the same, and made his Report

Which Exceptions came to be argued before the said Court, being adjudged reasonable, were allowed; and the Appellants

15th. January, 1704. Exceptions reheard.

And it also appearing by the said Answer, Examinations the Trust, the Court now ordered them to pay the Costs of

Second Report 9th. March, 1704.

That the Defendants, instead of complying with the said Exceptions, and also the Matter of Costs of Suit, which to

That pursuant to the said Orders, on hearing and rehearing Respondents their Costs, and certified 493 l. 0 s. 7 d. ready Money in the Appellant's Hands (belonging to the Respondents) and appointed them to bring the said 493 l. 0 s. 7 d. before him to be put out for the Respondents, according to the said Decree and Orders. And as to the Respondents Bill of Costs, which amounted to 317 l. 3 s. 10 d. taxed the same but at 193 l. 2 s. 1 d. And which Report was afterwards duly confirmed by the Court.

26th. May, 1705.

The Appellants, by Petition to the then Lord Keeper, say they are willing in every thing to comply with the said Decree; and therefore pray a Months time to bring the said 493 l. 0 s. 7 d. before the said Master. Which time was granted accordingly. And when elapsed, then

15th. June, 1705.

They prefer another Petition, and a second time say they are willing in all Things to comply with the said Decree, and that they had in great part performed the same already, but not able to compleat it by the time limited, and therefore prayed three Months longer time to bring in the said 493 l. 0 s. 7 d. ready Money, offering to give Security to pay it in that time.

23d. June, 1705.

Upon hearing Counsel on both Sides it was ordered, That the Appellants should have only a Fortnights time from thence to bring in the said Money, but the said 493 l. 0 s. 7 d. is not brought in to this day.

That after all these Proceedings, and 5 years Prosecution (almost to the Ruin of the Respondents) and after the said Appellants have submitted to pay (and have paid) the said Costs as taxed, and twice as aforesaid, by Petition, consented to the said Decrees, and said they were willing to comply therewith in every thing, yet now they have Appealed against the same.

Wherefore it is humbly prayed that your Lordships will dismiss the Petition of Appeal with exemplary Costs.

SAM. DODD.

N. LECHMERE.